IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8495 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DHIRAJLAL D PATIL

Appearance:

1. Special Civil Application No. 8495 of 2002

MS ROOPAL R PATEL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 11/12/2002

ORAL JUDGEMENT

1. In this writ petition under Articles 226 and 227

of the Constitution of India, the petitioner - Gujarat State Road Transport Corporation has been challenging the award dated 19.9.2001 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.459 of 1999, reducing the penalty imposed on the respondent - workman with stoppage of three yearly increments with future effect to without future effect.

2. It is submitted by Ms.Roopal Patel, learned advocate for the petitioner - Corporation that the respondent - workman has committed 20 defaults in course of his service of 20 years, 14 of which were the misconduct of misappropriation of the funds. That it is a fit case where the penalty of dismissal could have been inflicted but in the departmental proceedings, leniency was shown and penalty of stoppage of three increments with future effect was imposed. That the Tribunal ought not to have interfered with the penalty imposed in the departmental proceedings, and the reduction of the penalty to stoppage of three increments without future effect, is without any justification.

3. It is stated by Mr. Prabhakar Upadhyay, learned advocate for respondent - workman that there is no reason to interfere with the impugned award reducing the penalty from stoppage of three increments without future effect since it is only a case of mis-punching of the tickets by the respondent - workman.

4. It is not disputed that the respondent - workman has been working with the petitioner - Corporation as the bus conductor and was served with the charge sheet followed by the initiation and conduct of the departmental inquiry for having misappropriated the amount of Rs.21.50 by reissuing the tickets in the return trip of the bus. It is also alleged that the respondent - workman did not punch the tickets properly as regard other one and half tickets (one full and one child). In the impugned award, the Tribunal has confirmed the finding of misconduct arrived at in the departmental proceedings.

5. Relying on the decision in the case of Regional Manager, R.S.R.T.C. Vs. Ghanshyam Sharma, reported in 2002 I CLR 150, it has been submitted by the petitioner that the discretion under Section-11A of the I.D.Act has to be used judiciously and the dismissal of the conductor could have been the penalty imposed.

6. In the instant case, the respondent - workman has committed 20 defaults, 14 of which are with regard to

misappropriation of funds. There is no justification to award punishment of stoppage of three increments without future effect, confirming the findings of misconduct in the departmental proceedings. Perusal of the impugned award does not suggest any reason assigned for reducing the penalty of stoppage of three increment with future effect to stoppage of three increments without future effect.

7. Having proved the misconduct, the Tribunal under Section 11A of the I.D.Act ought not to have interfered with the penalty imposed in the departmental proceedings, and there is absolutely no reason assigned for reducing the same in reference case. Under the circumstances, I am inclined to interfere with the reduction of penalty by the Tribunal in the impugned award and the penalty of stoppage of three increments with future effect needs to be restored.

8. In the result, petition is granted. Rule is made absolute with no order as to costs.

(N.G.Nandi,J.)

(vipul)